

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

United States Court of Appeals
Fifth Circuit

FILED

November 20, 2009

Charles R. Fulbruge III
Clerk

No. 09-20355
Summary Calendar

GERALD ALLEN PERRY,

Petitioner-Appellant

v.

RICK THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE,
CORRECTIONAL INSTITUTIONS DIVISION,

Respondent-Appellee

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 4:97-CV-894

Before JOLLY, WIENER, and ELROD, Circuit Judges.

PER CURIAM:*

Petitioner-Appellant Gerald Allen Perry, Texas prisoner # 644896, was convicted by a jury of aggravated robbery and sentenced to 45 years in prison. Perry seeks a certificate of appealability (COA) so that he may appeal the district court's denial of his motion under Rule 11 of the Federal Rules of Civil Procedure. A COA is not necessary for this appeal; therefore we deny it as

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

unnecessary. Perry's motion to consolidate this appeal with Appeal No. 09-20047 is DENIED.

In his Rule 11 motion, Perry asked the district court to sanction the Attorney General of the State of Texas, arguing that the motion for summary judgment the State filed in response to his 28 U.S.C. § 2254 petition had no basis in law or fact.

Perry filed his Rule 11 motion more than 11 years after the State filed its motion for summary judgment. This court may affirm the denial of relief on any ground apparent on the face of the record. *See Sojourner T v. Edwards*, [974 F.2d 27, 30](#) (5th Cir. 1992). Accordingly, the district court did not abuse its discretion when it denied Perry's untimely motion. *See Thomas v. Capital Security Services, Inc.*, [836 F.2d 866, 879](#) (5th Cir. 1988) (en banc).

Perry has filed numerous motions in the district court regarding its denial of his § 2254 petition. The district court has denied all of Perry's motions. This court has denied all of Perry's related requests. Perry is warned that future frivolous challenges regarding his conviction or the district court's denial of his § 2254 petition, regardless of how they are styled, could result in the imposition of sanctions, including monetary sanctions.

AFFIRMED. COA DENIED AS UNNECESSARY. SANCTION WARNING ISSUED.